

Before the  
**Federal Communications Commission**  
Washington DC 20554

In the Matter of	)	
	)	
Changes Requested in Retail Point of Sales	)	
of All Over the Counter 2 Way Voice or	)	
Data Radio Equipment	)	RM-10641
	)	
Changes Requested in Mobile and Portable	)	
Ownership and License Tagging for	)	
Parts 5, 15, 18, 74, 80, 90, 95, 97	)	

**OPPOSITION TO PETITIONS FOR RULEMAKING**

February 28, 2003

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Vanu, Inc., and XtremeSpectrum, Inc.,

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**OPPOSITION TO PETITIONS FOR RULEMAKING**

The following companies (collectively, "Joint Commenters") hereby oppose the above-captioned Petitions for Rulemaking:<sup>1</sup>

**CompUSA Inc.**, a reseller (by retail and direct sales) of personal computer products and services, including technology communications products, with over 200 stores nationwide.

**Intersil Corporation**, manufacturer of complete WLAN chipsets, with worldwide sales in 2002 of 22-24 million radios (most sold in the U.S.), expected to double in 2003.

**Symbol Technologies, Inc.**, which designs and manufacturers over \$1.4 billion in wireless (unlicensed, Wi-Fi) products.

**Vanu, Inc.**, a developer of software for software defined radio systems.

**XtremeSpectrum, Inc.**, founded in 1998, the leading provider of ultra-wideband solutions for the multimedia connectivity industry.

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<sup>1</sup> See *Petitions for Rulemaking Filed*, Report No. 2591 (released Jan. 29, 2003). The petitioner filed two one-page documents, each captioned "Petition or Rule Change." The Commission subsumed them both into proceeding RM-10641.

For the reasons given below, the Commission should dismiss the Petitions as plainly not warranting consideration.<sup>2</sup>

#### A. SUMMARY OF PETITIONS

Petitioner Dale E. Reich asks the Commission to amend its Rules by adding the following provisions:

***Retail Sales Records:*** Retailers of all "over the counter 2 way voice or data radio equipment," *including unlicensed devices*, must keep records of each purchaser's name, address, telephone number, and signature, and any other information the Commission may require.<sup>3</sup> Retailers must collect this information on FCC-mandated forms and retain it for at least three years.<sup>4</sup> Only cellular, PCS, and SMR devices are exempted.

***"Ownership Tagging":*** Radios authorized under Parts 5, 15, 18, 74, 80, 90, 95, and 97 and "used off the licensee home site area" must be labeled with the owner's name and address, an indication of whether a license is required, and any FCC call sign or file number.<sup>5</sup>

#### B. GROUNDS FOR OPPOSITION

The Joint Commenters oppose the Petitions on the grounds that the proposed requirements would be extremely burdensome, and can serve no discernible purpose. The rules are all costs and no benefits.<sup>6</sup>

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<sup>2</sup> 47 C.F.R. Sec. 1.1401(e) ("Petitions which are moot, premature, repetitive, frivolous, or which plainly do not warrant consideration by the Commission may be denied or dismissed without prejudice to the petitioner.")

<sup>3</sup> "Retail Point of Sales" Request (single page).

<sup>4</sup> The petitioner suggests waiving the FCC-required form for certain licensed or long-established customers. But even then, the retailer must keep the records for three years. *Id.*

<sup>5</sup> "Ownership Tagging" Request (single page).

<sup>6</sup> In addition, the Petitions are procedurally defective. The Commission's Rules require a petition for rulemaking to "indicate how the interests of petitioner will be affected." 47 C.F.R. Sec. 1.401(c). The present Petitions offer no such indication. This alone is adequate

### ***1. Extreme Burden***

If adopted, the proposed requirements would overnight become the most burdensome by far of any, not only in the Commission's Rules, but in the entire Code of Federal Regulations. The need for individualized labeling and retailer record-keeping would extend to such ubiquitous consumer devices as cordless phones, wireless speakers, garage door openers, baby monitors, and even toy walkie-talkies and remote control toy cars.<sup>7</sup> But the Petitions offers no guidance on the mechanics of compliance. It is simply not feasible for the checkout clerks at CompUSA or Toys-R-Us to interrupt their duties to fill out purchaser-specific paperwork, open boxes, and prepare and apply individualized labels. Customers would not stand for the delays.

The record-keeping burden on retailers would be utterly unmanageable -- hundreds of millions of records each year, presumably in retrievable form. The Petitions contemplate retailers' keeping this vast mass of material private from unauthorized inspection, yet accessible to a "reasonable request" from law enforcement officials; and a retailer can invite police inspection if it suspects the radios are used unlawfully.<sup>8</sup> These provisions call on retailers to make close judgment calls about which law enforcement requests are "reasonable," and what observations about a customer create a sufficient suspicion to justify showing the records to police. And the provisions open the retailer to potential liability for getting any of the judgments

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grounds for dismissal.

<sup>7</sup> The name-and-address labeling requirement would also apply to microwave ovens, ultrasonic jewelry cleaners, and many other devices that use radio waves for purposes other than communications.

<sup>8</sup> "Retail Point of Sales" Request.

wrong. Given the huge volume of retail transactions that would come under these provisions, even a very low error rate could still create enormous potential liability for retailers.

The Petitions seek retailer record-keeping only for "over the counter sales."<sup>9</sup> It is unclear whether this language is meant to cover Internet and telephone sales. If not, Internet and telephone retailers would enjoy huge advantages in cost and convenience, driving customers out of the shopping malls. But even if the rules were made applicable to Internet and telephone retailers, their enforcement away from store premises would be all but impossible.

No Government agency requires this level of labeling and record-keeping for any consumer product, other than motor vehicles and the like. The aggregate costs of compliance would be staggering, typically a large fraction of the product cost. Such a regime would throttle the flow of customers through retail stores. It would inevitably threaten the market for consumer wireless devices -- including Wi-Fi, for example, which is presently one of the few bright spots in an otherwise bleak telecommunications environment. Emerging consumer technologies such as ultra-wideband would be cut off before they can establish a foothold. Even commercial devices, such as industrial wireless systems and radars, would incur disabling and unnecessary costs.

## **2. *No Benefits***

Rules this burdensome would have to show truly extraordinary justification. Yet, except for vague references to law enforcement, the petitioner does not even state what the rules are supposed to accomplish. The Petitions suggest that retail records be available to law

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<sup>9</sup>

*Id.*

enforcement officials,<sup>10</sup> but fail to say how that could be useful. Similarly, the Petitions suggest that equipment labels could be a "tool" or a "general guide" for law enforcement, but again do not say how.<sup>11</sup> Nothing in the Petitions hints to *any* discernable benefit, let alone one adequate to justify these rules.

### **CONCLUSION**

The petitioner has not thought through the costs of the proposed rules, relative to their supposed purpose. The requested provisions would entail great burdens and no benefits whatsoever. The Commission should dismiss the Petitions without further action.

Respectfully submitted,

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<sup>10</sup> *Id.*

<sup>11</sup> "Ownership Tagging" Request. The Petitions say only that the label would be useful to law enforcement "when having chats with fellows in the field to the effect, 'Hey -- Bud, you got a license for that radio?'" *Id.* But such "chats" are hardly common enough to justify the enormous costs and inconvenience that labeling would entail. In any event, a determined lawbreaker would have little difficulty forging a label.

**CERTIFICATE OF SERVICE**

I, Deborah N. Lunt, a secretary with the law firm of Fletcher, Heald & Hildreth, PLC, hereby certify that a true copy of the foregoing "Opposition to Petitions for Rule Making" was sent this 28th day of February, 2003, by U.S. mail, postage prepaid (except as noted) to:

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